THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION Nos.16722 of 2005 and 1114 of 2006

01.9.2006

Between:

Smt.M.Pichamma, W/0.Late Ankamma
And others

… Petitioners

AND

The Revenue Divisional Officer, Chevella Division, Ranga Reddy District
And others

… Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION Nos.16722 of 2005 and 1114 of 2006

COMMON ORDER:

In these two writ petitions filed for a writ of Certiorari and Mandamus, the order/proceedings of the Revenue Divisional Officer, Chevella Division (RDO), is/are assailed, as illegal and without jurisdiction. Therefore, this common order is sufficient to dispose of both the writ petitions by referring to array of parties in W.P.No.1114 of 2006.

The dispute in these writ petitions is in respect of agricultural land admeasuring Acs.3.19 guntas in survey No.40 situated at Raidurg Naw Khalsa Village of Serilingampally Mandal in Ranga Reddy District (hereafter called, the subject property). The subject property was shown to be patta lands of respondents 3 and 4 herein and two others. It is the case of the petitioners that the pattadars sold the subject property under an unregistered agreement of sale dated 20.12.1971 to respondents 5 to 12. The respondents 5 to 12 then approached the Mandal Revenue Officer, Serilingampally Mandal (MRO), under Section 5A of A.P. Rights in Lands and Pattadar Pass Books Act, 1971 (the Act, for brevity) and A.P. Rights in Lands and Pattadar Pass Books Rules, 1989 (the Rules, for brevity), for regularization of transaction under agreement of sale. The MRO, after conducting proper enquiry under Section 5A of the Act, issued

proceedings dated 06.4.1993 regularizing sale. On 02.9.1995, respondents 5 to 12 sold the subject property to respondents 13 and 14, who in turn sold the same to the petitioners or their predecessors under registered sale deeds dated 16.12.2004 and 13.9.2004.

Feeling aggrieved by the proceedings of the MRO dated 06.4.1993 under Section 5A of the Act, respondents 3 and 4 filed appeal purportedly under Section 5B of the Act before the RDO, who set aside the order of the MRO and remitted the matter to the MRO, for fresh enquiry under Section 5A of the Act on the ground that principles of natural justice are violated. Aggrieved by the order of the RDO, respondents 13 and 14, namely, M.Pichamma and N.Subbayamma, filed W.P.No.16722 of 2005 and their vendees, namely, Neha Agarwal and S.V.Satyanarayana, filed W.P.No.1114 of 2006.

The respondents 3 and 4 filed their counter affidavit in W.P.No.16722 of 2005. They contend that if the impugned order of the RDO is interfered with, the same would amount to restoring the order of the MRO, which is illegal and without jurisdiction. MRO passed order without notice to original owners as required under Rule 22 of the Rules. They allege that the subject property belongs to them, that they being absolute owners and possessors they are enjoying the land, though in the year 2000-2001 the names of Eega Gandaiah, Golla Danaboina Komaraiah and Makthala Narsinga Rao were entered in the pahanies. On enquiries, they came to know that Eega Gandaiah, Golla Danaboina Komaraiah and Makthala Narsinga Rao approached the MRO under Section 5A of the Act claiming to be purchasers under unregistered agreement of sale, which was never executed by respondents 3 and 4. It is alleged that the predecessors of respondents 5 to 12 played fraud in obtaining proceedings from the MRO and, therefore, the RDO is justified in remanding the matter to the MRO for *de novo* enquiry.

Learned Counsel for the petitioners made the following submissions. Section 5B of the Act was inserted by A.P. Rights in Land and Pattadar Pass Books (Amendment) Act, 1994 (A.P. Act No.9 of 1994), which came into force with effect from 31.10.1993. Therefore, against the order passed by the MRO under Section 5A of the Act, on 06.4.1993, appeal would not lie to the RDO. Strong reliance is placed on two judgments of the Supreme Court in **M.B.Ratham v Revenue Divisional Officer, R.R.Dist.**[1], **K.R.Goud v Bhavanarishi Co-op.**

House Building Society[2] and a judgment of this Court in **Habeeb Yahiya v Government of A.P.**[3]. It is the second submission that the appeal filed by respondents 3 and 4 before the RDO is barred by limitation and that any appeal against the orders of the MRO under Section 5A of the Act has to be filed within thirty (30) days. **Per contra**, learned Counsel for respondents 3 and 4 placed strong reliance on the observations made by the Division Bench of this Court in **K.R.Goud** (supra) and submits that an appeal under Section 5B of the Act cannot be ruled out even against the orders passed by the MRO under Section 5A of the Act prior to 31.10.1993. Nextly, it is contended by the learned Counsel for respondents 3 and 4 that respondents 5 to 12 obtained regularization orders under Section 5A of the Act from the MRO by playing fraud and, therefore, if the present writ petition is allowed, it amounts to reviving an illegal order, which is not permissible in the exercise of jurisdiction under Article 226 of Constitution of India.

Under Section 5B of the Act, an appeal shall lie against an order passed by the MRO under subsection (4) of Section 5A of the Act to RDO within thirty (30) days from the date of communication of the order. The order passed by the RDO shall be subject to revision under Section 9 of the Act. When the statute prescribed time-limit for exercising the quasi-judicial power, such power has to be exercised strictly in accordance with the statute. Unless the statute confers power and authority to condone the delay for entertaining appeal brought before such authority beyond the prescribed period of limitation, appeal cannot be entertained even when an application for condonation of delay is filed. In this case, there is no dispute that the MRO issued certificate in Form XIIIB under Section 5A(4) of the Act read with Rule 22(5)(ii) of the Rules in favour of respondents 5 to 12 on 06.4.1993. The respondents 3 and 4 filed appeal under Section 5B of the Act before the RDO – there is no dispute on this – on 21.1.2005; that is to say, respondents 3 and 4 filed appeal after lapse of about twelve years. An appeal after such a long time could have been entertained by the RDO. A Division Bench of this Court in **M.B.Ratnam** (supra), considered the question whether it is competent to entertain appeal after lapse of ten years. It was held that even when a person claiming that he had no knowledge of order of MRO, an appeal has to be filed within a reasonable time from the date of

knowledge and settled legal rights cannot be permitted to be unsettled by exercising appellate jurisdiction after lapse of ten years.

Whether appeal under Section 5B of the Act against the order passed by the MRO under Section 5A(4) of the Act, prior to coming into force of Section 5B of the Act with effect from 31.10.1993, is maintainable? This is no more *res integra*. The Division Bench of this Court in **M.B.Ratnam** (supra) considered the said question and laid down as under.

> We have already noticed that Amending Act of 1994 was given effect from 31st October 1993. The Act did not provide any right of appeal or revision against the orders passed by the Mandal Revenue Officer under Section 5-A of the R.O.R.Act prior to Section 5-B coming into operation. In the instant case, the orders under Sec.5-A of the R.O.R.Act are dated 6.2.1990 and the proceeding resulting in grant of certificate under Section 5-A of the R.O.R.Act itself was initiated prior to 6.2.1990. Thus, it is clear that neither on the date when the proceedings were instituted under Sec.5-A of the R.O.R.Act nor as on the date when the orders were passed by the Mandal Revenue Officer, there has been any rights of appeal provided under the Act. … … The right of appeal is only a creature of the Statute. Once it is created, it becomes a vested right. But, there is no automatic right of appeal unless it is provided for by the Statute itself. … … For the aforesaid reasons, we are of the considered opinion that the appeals preferred on 18.12.2001 by respondents 3 to 8 herein are not maintainable in law. It is no doubt true that as on the date of filing of appeals, Section 5-B of the R.O.R.Act has come into force whereunder an appeal is provided against the orders passed by the Mandal Revenue Officer under Section 5-A of the R.O.R.Act, to the Revenue Divisional Officer. But, the crucial test is as to whether there was any right of appeal as on the date when the proceedings were initiated and orders passed. … … It is a case of patent and inherent lack of jurisdiction in the Revenue Divisional Officer to entertain any appeal against the orders dated 6.2.1990 passed by the Mandal Revenue Officer under Section 5-A of the R.O.R.Act.

This Court is not able to countenance the submission of the learned Counsel for respondents 3 and 4 that another Division Bench of this Court in **K.R.Goud** (supra), took a different view. In **K.R.Goud** (supra), the Division Bench noticed and considered **M.B.Ratnam** (supra), quoted its ratio with approval and observed as under.

> We are not inclined to go into the other question of

> retrospectivity of the provisions, since, in our view; Section 9 was amended only when specific appellate powers were conferred on the Revenue Divisional Officer for the first time when Section 5-B was inserted by Amendment Act 9 of 1994. Prior thereto, the order passed by the Mandal Revenue Officer under Section 5-A was not made appellable and rightly a Division Bench of this Court in M.B.Ratnam's case came to the conclusion that no appeal lay against the order of the Mandal Revenue Officer passed prior to Act NO.9 of 1994 coming into force.

In these cases, respondents 5 to 12 field application under Section 5A of the Act before the MRO only in respect of land admeasuring Acs.3.19 guntas in survey No.40 by reason of an unregistered transaction under an agreement of sale dated 20.2.1971. The respondents 3 and 4 claim that they are legal heirs of Mohammad Khan and that after death of Mohammad Khan, they are alone absolute owners of the subject property along with other lands. Respondents 5 to 12 sold the land in favour of respondents 13 and 14 under registered sale deeds. Therefore, there cannot be any justification for the apprehension of the respondents 3 and 4 that the respondents 5 to 14 might claim other lands in survey Nos.41, 44 and 46 situated at Raidurg Naw Khalsa Village. There is no doubt on this nor learned Counsel for the petitioners deny this. Presumably for this reason in their appeal respondents 3 and 4 referred to the land admeasuring Acs.3.19 guntas in survey No.40 only. Therefore, this aspect of the matter need not be dilated any further.

In the result, for the above reasons, these writ petitions are allowed and the impugned order of the Revenue Divisional Officer, Chevella Division in proceedings No.6/155/2005, dated 20.6.2005 is quashed. There shall, however, be no order as to costs.

(**V.V.S.RAO, J**)

September 1, 2006.

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[1] 2003(1) ALT 688 (D.B.)

[2] 2003(5) ALD 654 (D.B.)

[3] 2003(5) ALD 215